

AMENDED IN SENATE FEBRUARY 24, 2003

AMENDED IN SENATE FEBRUARY 3, 2003

AMENDED IN SENATE JANUARY 30, 2003

CALIFORNIA LEGISLATURE—2003–04 FIRST EXTRAORDINARY SESSION

## SENATE BILL

**No. 10**

**Introduced by Senators Sher and Scott**

January 27, 2003

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An act to ~~add Section 52126.1 to, and to add Chapter 6.50~~  
(~~commencing with Section 52129~~) to Part 28 of, *amend Sections 52122,*  
*52123, 52124, and 52124.5 of the Education Code, relating to class size.*

### LEGISLATIVE COUNSEL'S DIGEST

SB 10, as amended, Sher. ~~Class Size Reduction Flexibility~~  
~~Alternative Program~~ *size reduction.*

Existing law establishes the Class Size Reduction Program in which participating school districts are provided funding for each class in which the class size is reduced to a ratio of 20 pupils to 1 teacher in kindergarten and any of grades 1 to 3, inclusive.

This bill would additionally ~~establish the Class Size Reduction Flexibility Alternative Program in which participating school districts that certify that participating classes are~~ *allow a class* taught by a *fully and properly credentialed teacher who holds either a preliminary or clear teaching credential, as specified, are provided funding for each class, in kindergarten and any of grades 1 to 3, inclusive, in which the to maintain an annual average class size is that does not exceed 22 pupils to 1 teacher, provided that if the schoolsite annual average class*

size does not exceed ~~a~~ *an annual average* class size ratio of 20 pupils to 1 teacher.

~~This bill would require a school to elect whether to operate under the existing Class Size Reduction Program or under the new Class Size Reduction Flexibility Alternative Program and prohibits a school from receiving funding under both programs.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 52126.1 is added to the Education Code,~~  
2 *SECTION 1. Section 52122 of the Education Code is*  
3 *amended to read:*

4 52122. (a) Except as otherwise provided by Section 52123,  
5 ~~any~~ a school district that maintains ~~any~~ kindergarten or any of  
6 grades 1 to 3, inclusive, may apply to the Superintendent of Public  
7 Instruction for an apportionment to implement a class size  
8 reduction program in that school district in kindergarten and any  
9 of the grades ~~designated in this chapter~~ *1 to 3, inclusive.*

10 (b) An application submitted pursuant to this chapter shall  
11 identify both of the following:

12 (1) Each class that will participate in the Class Size Reduction  
13 Program.

14 (2) For each class that will participate in the Class Size  
15 Reduction Program, whether that class will operate under Option  
16 One or Option Two:

17 (A) (i) Option One: A school district shall provide a reduced  
18 class size for all pupils in each classroom for the full regular  
19 schoolday in each grade level for which funding is claimed. For the  
20 purposes of this chapter, “full regular schoolday” means a  
21 substantial majority of the instructional minutes per day, but shall  
22 permit limited periods of time during which pupils are brought  
23 together for a particular phase of education in groups that are larger  
24 than 20 pupils per certificated teacher. It is the intent of the  
25 Legislature that those limited periods of time be kept to a minimum  
26 and that instruction in reading and mathematics not be delivered  
27 during those limited periods of time. For the purposes of this  
28 subparagraph, “class” is defined in the same manner as provided  
29 in the regulations adopted by the Superintendent of Public

1 Instruction prior to July 1, 1996, pursuant to Sections 41376 and  
2 41378 (subdivision (a) of Section 15103 of Title 5 of the California  
3 Code of Regulations).

4 (ii) The purpose of the Class Size Reduction Program is to  
5 ensure that children in public school in kindergarten and grades 1  
6 to 3, inclusive, receive instruction in classrooms where there are  
7 not more than 20 pupils. Except as provided in subdivision ~~(h)~~ (e),  
8 in order to qualify for funding pursuant to this chapter, each class  
9 in the Class Size Reduction Program shall be maintained with an  
10 annual average class size of not more than 20 pupils for the  
11 instructional time that qualifies the class for funding pursuant to  
12 this chapter. *A class that is instructed by a teacher who holds either*  
13 *a preliminary or clear teaching credential may have an annual*  
14 *average class size ratio that does not exceed 22 pupils to 1 teacher;*  
15 *if the annual schoolsite average class size does not exceed a ratio*  
16 *of 20 pupils to 1 teacher. Nothing in this chapter shall be construed*  
17 *to prohibit the class size from exceeding 20 pupils on any*  
18 *particular day, provided that the average class size for the school*  
19 *year does not exceed 20.*

20 (B) (i) Option Two: A school district shall provide a reduced  
21 class size for all pupils in each classroom for at least one-half of  
22 the instructional minutes offered per day in each grade level for  
23 which funding is claimed. ~~School districts~~ *A school district*  
24 *selecting this option shall primarily devote those instructional*  
25 *minutes to the subject areas of reading and mathematics. For the*  
26 *purposes of this subparagraph, “class” is defined in the same*  
27 *manner as provided in the regulations adopted by the*  
28 *Superintendent of Public Instruction prior to July 1, 1996,*  
29 *pursuant to Sections 41376 and 41378 (subdivision (a) of Section*  
30 *15103 of Title 5 of the California Code of Regulations).*

31 (ii) The purpose of the Class Size Reduction Program is to  
32 ensure that children in public school in kindergarten and grades 1  
33 to 3, inclusive, receive instruction in classrooms where there are  
34 not more than 20 pupils. Except as provided in subdivision ~~(h)~~ (e),  
35 in order to qualify for funding pursuant to this chapter, each class  
36 in the Class Size Reduction Program shall be maintained with an  
37 annual average class size of not more than 20 pupils for the  
38 instructional time that qualifies the class for funding pursuant to  
39 this chapter. *A class that is instructed by a teacher who holds either*  
40 *a preliminary or clear teaching credential may have an annual*

1 *average class size ratio that does not exceed 22 pupils to 1 teacher;*  
2 *if the annual schoolsite average class size does not exceed a ratio*  
3 *of 20 pupils to 1 teacher. Nothing in this chapter shall be construed*  
4 *to prohibit the class size from exceeding 20 pupils on any*  
5 *particular day, provided that the average class size for the school*  
6 *year does not exceed 20.*

7 ~~(c) A school district that intends to implement a class size~~  
8 ~~reduction program for the 1996-97 school year shall submit an~~  
9 ~~application for funds pursuant to this chapter to the Superintendent~~  
10 ~~of Public Instruction not later than November 1, 1996. To receive~~  
11 ~~the total amount of funding in the 1996-97 school year for which~~  
12 ~~the school district is eligible pursuant to Section 52126, a school~~  
13 ~~district shall implement the Class Size Reduction Program by~~  
14 ~~February 16, 1997, within the meaning of paragraph (2) of~~  
15 ~~subdivision (b).~~

16 ~~(d) A school district that intends to implement or continue to~~  
17 ~~implement a class size reduction program for the 1997-98 school~~  
18 ~~year and any subsequent school year shall submit an application~~  
19 ~~for funding pursuant to this chapter to the Superintendent of Public~~  
20 ~~Instruction not later than 90 days after the annual Budget Act is~~  
21 ~~chaptered, unless otherwise specified in regulations adopted by the~~  
22 ~~State Board of Education.~~

23 ~~(e) For the 1997-98 school year, a school district that is either~~  
24 ~~implementing or expanding a class size reduction program~~  
25 ~~pursuant to this chapter may receive funding pursuant to this~~  
26 ~~chapter even if the new classes for which funding is sought are not~~  
27 ~~implemented at the beginning of the 1997-98 school year,~~  
28 ~~provided that, for each new class in the Class Size Reduction~~  
29 ~~Program, all of the following criteria are met:~~

30 ~~(1) The teacher for each new class is hired and placed on the~~  
31 ~~school district's payroll by November 1, 1997.~~

32 ~~(2) Each teacher for a new class has begun to receive the~~  
33 ~~training required by this chapter on or before February 16, 1998.~~

34 ~~(3) All other requirements of this chapter are satisfied by~~  
35 ~~February 16, 1998, and continue to be satisfied for the remainder~~  
36 ~~of the 1997-98 school year.~~

37 ~~(f) For the 1997-98 school year, the number of new classes in~~  
38 ~~the Class Size Reduction Program is the number of classes~~  
39 ~~satisfying the requirements of this chapter minus the number of~~

~~classes funded in the Class Size Reduction Program pursuant to this chapter in the 1996-97 school year.~~

~~(g)~~

(d) Any school district that chooses to reduce class size through the use of an early-late instructional program is ineligible to ~~also~~ use Section 46205, relating to the computation of instructional time for purposes of the Incentive for Longer Instructional Day and Year, in any grade level for which class size reduction funding is received pursuant to this chapter; ~~provided, however, that any.~~ A school district that operated under Section 46205 prior to July 1, 1996, may receive class size reduction funding pursuant to Option One in any grade level for which class size reduction funding would otherwise be received pursuant to Option One.

~~(h)~~

(e) (1) Notwithstanding any other provision of law, a school district that maintains only one school serving pupils in kindergarten and grades 1 to 3, inclusive, is eligible to receive funding under this section on behalf of the school if there are no more than two classes per participating grade level and the average class size is no more than 20 pupils in each of the classes participating in class size reduction at that schoolsite. For purposes of this subdivision, average class size may be determined by calculating the total number of pupils enrolled in all classes at all grade levels in a school that will participate in the Class Size Reduction Program divided by the total number of classes in the school. The ratio of pupils to teacher in any class included in the average shall not exceed the 20 to 1 standard by more than two pupils.

(2) As a condition of applying for funding under this subdivision, a governing board shall make a public declaration, either by adopting a resolution or by issuing a statement in a publicly noticed open meeting, that it has exhausted all possible alternatives to averaging and is unable to achieve the 20 to 1 pupil-teacher ratio in a way that is educationally acceptable.

(f) *For purposes of this section, the schoolsite average class size is determined by calculating the total number of pupils at a schoolsite who are enrolled in classes at all grade levels that participate in the Class Size Reduction Program divided by the total number of classes at the schoolsite at all grade levels that participate in the Class Size Reduction Program.*

1 SEC. 2. Section 52123 of the Education Code is amended to  
2 read:

3 52123. ~~A school district's~~ *The application of a school district*  
4 *for funding to implement a program pursuant to this chapter shall*  
5 *include the district's certification by the school district of each of*  
6 *the following items as a condition to receiving any an*  
7 *apportionment under Section 52126:*

8 (a) Certification of the number of classes in each eligible grade  
9 level selected for a class size reduction apportionment pursuant to  
10 this chapter.

11 (b) Certification of pupil enrollment, as of October of the  
12 previous calendar year, in each class selected for class size  
13 reduction pursuant to subdivision (a). Classes comprised of special  
14 education pupils enrolled in special day classes on a full-time basis  
15 ~~shall may~~ not be included in this program. ~~School districts~~ *A school*  
16 *district may not claim funding pursuant to this chapter for any a*  
17 *pupil who is enrolled in independent study pursuant to Article 5.5*  
18 *(commencing with Section 51745) of Chapter 5 of Part 28 for the*  
19 *full regular schoolday nor may a school districts district claim*  
20 *funding pursuant to this chapter for any a pupil for any portion of*  
21 *the full regular day that the pupil is enrolled in independent study*  
22 *pursuant to that article. Charter schools may not claim funding*  
23 *pursuant to this chapter for any pupil who is enrolled in a program*  
24 *of home study for the full regular schoolday nor may charter*  
25 *schools claim funding for any pupil for any portion of the full*  
26 *regular schoolday that the pupil is enrolled in a program of home*  
27 *study.*

28 (c) (1) Except as provided in paragraph (2), certification that  
29 a certificated teacher *or a teacher who holds either a preliminary*  
30 *or clear teaching credential* has been hired by the school district  
31 and is providing direct instructional services to each class selected  
32 for class size reduction pursuant to this chapter and that there ~~are~~  
33 *is not more than an annual schoolsite average of 20 pupils per each*  
34 *class.*

35 (2) In a school district that applies for funding pursuant to  
36 subdivision ~~(h)~~ (e) of Section 52122, certification of all of the  
37 following:

38 (A) A certificated teacher has been hired by the school district  
39 and is providing direct instructional services to each class selected  
40 for class size reduction pursuant to this chapter.

(B) The ratio of pupils to teacher does not exceed the 20 to 1 standard ratio by more than two pupils.

(3) For the purposes of this subdivision, “class” shall be defined in the same manner as provided in the regulations adopted by the Superintendent of Public Instruction prior to July 1, 1996, pursuant to Sections 41376 and 41378 (subdivision (a) of Section 15103 of Title 5 of the California Code of Regulations).

(d) Certification that the school district has a staff development program pursuant to Section 52127 and that the program has been approved by the governing board of the school district.

(e) Certification that the school district will collect and maintain any data required by the Superintendent of Public Instruction that will aid in the evaluation of the Class Size Reduction Program. The data shall include, but not be limited to, individual test scores or other records of pupil achievement. ~~Any data~~ Data collected shall be protected in a manner that will not permit the personal identification of any pupil or parent.

~~(f) Commencing with the 1998–99 school year and each school year thereafter, certification~~ Certification that each class reduced pursuant to this chapter is housed in either a separate, self-contained classroom or that the space of each class for each grade level at that schoolsite provides a square footage per pupil enrolled in each class that is not less than the average square footage per pupil enrolled in those grade levels at that schoolsite in the 1995–96 school year.

SEC. 3. *Section 52124 of the Education Code is amended to read:*

52124. (a) ~~Any~~ A school district that implements a ~~Class Size Reduction Program~~ *class size reduction program* pursuant to this chapter is subject to this section.

(b) A school district may establish a program to reduce class size in kindergarten and grades 1 to 3, inclusive, and that program shall be implemented at each schoolsite according to the following priorities:

(1) If only one grade level is reduced at a schoolsite, the grade level shall be grade 1.

(2) If only two grade levels are reduced at a schoolsite, the grade levels shall be grades 1 and 2.

(3) If three grade levels are reduced at a schoolsite, ~~then~~ those grade levels shall be kindergarten and grades 1 and 2 or grades 1



1 to 3, inclusive. Priority shall be given to the reduction of class sizes  
2 in grades 1 and 2 before the class sizes of kindergarten or grade 3  
3 are reduced.

4 (4) If four grade levels are reduced at a schoolsite, ~~then~~ those  
5 grade levels shall be kindergarten and grades 1 to 3, inclusive. First  
6 priority shall be given to the reduction of class sizes in grades 1 and  
7 2, second priority shall be given to the reduction of class size in  
8 kindergarten and grade 3. This paragraph shall be operative only  
9 in those fiscal years for which funds are appropriated expressly for  
10 the purposes of this paragraph.

11 (c) It is the intent of the Legislature to continue to permit the  
12 use of combination classes of more than one grade level to the  
13 extent that ~~a school district is~~ *a district is* otherwise permitted to  
14 use that instructional strategy. However, any school district that  
15 uses a combination class in any class for which funding is received  
16 pursuant to this chapter may not claim funding pursuant to this  
17 chapter if the total number of pupils in the combination class,  
18 regardless of grade level, ~~exceeds~~ *causes the annual schoolsite*  
19 *average to exceed* 20 pupils per certificated teacher assigned to  
20 provide direct instructional services.

21 (d) The governing board of a school district shall certify to the  
22 Superintendent of Public Instruction that it has met the  
23 requirements of this section in implementing its ~~Class-Size~~  
24 ~~Reduction Program~~ *class size reduction program*. If a school  
25 district receives funding pursuant to this chapter but has not  
26 implemented its ~~Class-Size Reduction Program~~ *class size*  
27 *reduction program* for all grades and classes for which it received  
28 funding pursuant to this chapter, the Superintendent of Public  
29 Instruction shall notify the Controller and the school district in  
30 writing and the Controller shall deduct an amount equal to the  
31 amount received by the school district under this chapter for each  
32 class *at the schoolsite* that the school district failed to reduce to a  
33 class size of 20 or less pupils, *or 22 or less pupils for those classes*  
34 *that are taught by a teacher who holds a preliminary or clear*  
35 *teaching credential, pursuant to clause (ii) of subparagraph (A) of*  
36 *paragraph (2) of subdivision (b) of Section 52122 or clause (ii) of*  
37 *subparagraph (B) of paragraph (2) of subdivision (b) of Section*  
38 *52122*, from the school district's next principal apportionment or  
39 apportionments of state funds to the district, other than basic aid



1 apportionments required by Section 6 of Article IX of the  
2 California Constitution.

3 *SEC. 4. Section 52124.5 of the Education Code is amended to*  
4 *read:*

5 52124.5. (a) ~~(1)~~—The Controller shall include instructions,  
6 appropriate to the enforcement of subdivision (d) of Section  
7 52124, in the audit guide *or supplement to the audit guide* required  
8 by subdivision (a) of Section ~~14502~~ 14502.1. These instructions  
9 shall include, but not necessarily be limited to, procedures for  
10 determining if the annual *schools*ite average class enrollment  
11 exceeds 20.4 for classes for which funding is provided to a school  
12 district pursuant to this chapter. The procedures to determine  
13 average class enrollment shall include criteria for employing  
14 sampling which will satisfy both of the following:

15 ~~(A)~~—

16 (1) The number of classes to be reviewed shall be based on  
17 auditor judgment, but the selection of classes shall be done  
18 randomly.

19 ~~(B)~~—

20 (2) For each class selected, the sample shall include at least 15  
21 days randomly selected from all instructional days which occurred  
22 between the first day of instruction and April 15, ~~inclusively~~  
23 *inclusive*, of the school year.

24 ~~(2) (A)~~—

25 (b) (1) If the auditor concludes from the sample, based on his  
26 or her professional judgment, that *the schools*ite average class size  
27 ~~for the sampled classes~~ is more than 20.4 when averaged over a  
28 period from the first day of instruction to April 15 of the school  
29 year, ~~then~~ the auditor shall conduct a more in-depth review. The  
30 in-depth review shall be either of the following:

31 ~~(i)~~

32 (A) A review of all instructional days for all classes for which  
33 a district has requested funding pursuant to Section 52126.

34 ~~(ii)~~

35 (B) A randomly selected sample of all classes and instructional  
36 days of sufficient size and designed in such a manner that the class  
37 size for each class, when averaged over the period from the first  
38 day of instruction to April 15, that the auditor can conclude that the  
39 average daily class size does not exceed 20 with an error of no more  
40 than 0.4 rate at 95 percent degree of confidence.

~~(B)~~

(2) The school district shall make the determination as to which of the two in-depth review methods set forth in ~~subparagraph (A) subdivision (b)~~ shall be used.

~~(b) The results of the audits conducted for the 1996-97 and 1997-98 school years shall be reported by the Superintendent of Public Instruction to the Legislature and the Department of Finance no later than February 1 of the fiscal year subsequent to the audit.~~

to read:

~~52126.1. A school shall elect whether to receive funding under Sections 52126 or 52129.5 but may not claim funding pursuant to both Sections 52126 and 52129.5.~~

~~SEC. 2. Chapter 6.50 (commencing with Section 52129) is added to Part 28 of the Education Code, to read:~~

~~CHAPTER 6.50. CLASS SIZE REDUCTION FLEXIBILITY  
ALTERNATIVE PROGRAM~~

~~52129. This act shall be known and may be cited as the Class Size Reduction Flexibility Alternative Program.~~

~~52129.1. (a) Except as otherwise provided by Section 52129.2, a school district that maintains kindergarten or any of grades 1 to 3, inclusive, may apply to the Superintendent of Public Instruction for an apportionment to implement a class size reduction flexibility alternative program in any school in that district in kindergarten and any of grades 1 to 3, inclusive.~~

~~(b) An application submitted pursuant to this chapter shall identify both of the following:~~

~~(1) Each class that will participate in the Class Size Reduction Flexibility Alternative Program.~~

~~(2) For each class that will participate in the Class Size Reduction Flexibility Alternative Program, whether that class will operate under Option One or Option Two:~~

~~(A) (i) Option One: A school district shall provide a reduced class size for all pupils in each classroom for the full regular schoolday in each grade level for which funding is claimed. For the purposes of this chapter, "full regular schoolday" means a substantial majority of the instructional minutes per day, but shall permit limited periods of time during which pupils are brought~~

together for a particular phase of education in groups that are larger than 22 pupils per certificated teacher. It is the intent of the Legislature that those limited periods of time be kept to a minimum and that instruction in reading and mathematics not be delivered during those limited periods of time. For the purposes of this subparagraph, “class” is defined in the same manner as provided in the regulations adopted by the Superintendent of Public Instruction prior to July 1, 1996, pursuant to Sections 41376 and 41378 (subdivision (a) of Section 15103 of Title 5 of the California Code of Regulations).

(ii) The purpose of the Class Size Reduction Flexibility Alternative Program is to ensure that children in public school in kindergarten and grades 1 to 3, inclusive, receive instruction at a schoolsite where there are not more than 20 pupils per class in the participating grade levels. Except as provided in subdivision (e), in order to qualify for funding pursuant to this chapter, each class in the Class Size Reduction Flexibility Alternative Program shall be maintained with an annual average class size of not more than 22 pupils for the instructional time that qualifies the class for funding pursuant to this chapter. Nothing in this chapter shall be construed to prohibit the class size from exceeding 22 pupils on any particular day, provided that the average class size of the individual class for the school year does not exceed 22.

(B) (i) Option Two: A school district shall provide a reduced class size for all pupils in each classroom for at least one-half of the instructional minutes offered per day in each grade level for which funding is claimed. A school district selecting this option shall primarily devote those instructional minutes to the subject areas of reading and mathematics. For the purposes of this subparagraph, “class” is defined in the same manner as provided in the regulations adopted by the Superintendent of Public Instruction prior to July 1, 1996, pursuant to Sections 41376 and 41378 (subdivision (a) of Section 15103 of Title 5 of the California Code of Regulations).

(ii) The purpose of the Class Size Reduction Flexibility Alternative Program is to ensure that children in public school in kindergarten and grades 1 to 3, inclusive, receive instruction at a schoolsite where there are not more than 20 pupils per classroom in the participating grade levels. Except as provided in subdivision (e), in order to qualify for funding pursuant to this chapter, each

1 class in the Class Size Reduction Flexibility Alternative Program  
2 shall be maintained with an annual average class size of not more  
3 than 22 pupils for the instructional time that qualifies the class for  
4 funding pursuant to this chapter. Nothing in this chapter shall be  
5 construed to prohibit the class size from exceeding 22 pupils on  
6 any particular day, provided that the average class size of the  
7 individual class for the school year does not exceed 22.

8 (c) A school district that intends to implement or continue to  
9 implement a class size reduction flexibility alternative program  
10 shall submit an application for funding pursuant to this chapter to  
11 the Superintendent of Public Instruction not later than 90 days  
12 after the annual Budget Act is chaptered, unless otherwise  
13 specified in regulations adopted by the State Board of Education.

14 (d) Any school district that chooses to reduce class size through  
15 the use of an early-late instructional program is ineligible to also  
16 use Section 46205, relating to the computation of instructional  
17 time for purposes of the Incentive for Longer Instructional Day  
18 and Year, in any grade level for which class size reduction  
19 flexibility alternative funding is received pursuant to this chapter;  
20 provided, however, that any school district that operated under  
21 Section 46205 prior to July 1, 1996, may receive class size  
22 reduction flexibility alternative funding pursuant to Option One in  
23 any grade level for which class size reduction flexibility  
24 alternative funding would otherwise be received pursuant to  
25 Option One.

26 (e) (1) Notwithstanding any other provision of law, a school  
27 district that maintains only one school serving pupils in  
28 kindergarten and grades 1 to 3, inclusive, is eligible to receive  
29 funding under this section on behalf of the school if there are no  
30 more than two classes per participating grade level and the average  
31 class size is no more than 20 pupils in each of the classes  
32 participating in class size reduction at that schoolsite. For purposes  
33 of this subdivision, average class size may be determined by  
34 calculating the total number of pupils enrolled in all classes at all  
35 grade levels in a school that will participate in the Class Size  
36 Reduction Flexibility Alternative Program divided by the total  
37 number of classes in the school. The ratio of pupils to teacher in  
38 any class included in the average shall not exceed the 20-to-1  
39 standard by more than two pupils.

~~(2) As a condition of applying for funding under this subdivision, a governing board shall make a public declaration, either by adopting a resolution or by issuing a statement in a publicly noticed open meeting, that it has exhausted all possible alternatives to averaging and is unable to achieve the 20 to 1 pupil-teacher ratio in a way that is educationally acceptable.~~

~~52129.2.— The application of a school district for funding to implement a program pursuant to this chapter shall include certification of each of the following items as a condition to receiving any apportionment under Section 52129.5:~~

~~(a) Certification of the number of classes in each eligible grade level selected for a class size reduction flexibility alternative apportionment pursuant to this chapter.~~

~~(b) Certification of pupil enrollment, as of October of the previous calendar year, in each class selected for class size reduction pursuant to subdivision (a). Classes comprised of special education pupils enrolled in special day classes on a full-time basis shall not be included in this program. School districts may not claim funding pursuant to this chapter for any pupil who is enrolled in independent study pursuant to Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 for the full regular schoolday nor may school districts claim funding pursuant to this chapter for any pupil for any portion of the full regular day that the pupil is enrolled in independent study pursuant to that article. Charter schools may not claim funding pursuant to this chapter for any pupil who is enrolled in a program of home study for the full regular schoolday nor may charter schools claim funding for any pupil for any portion of the full regular schoolday that the pupil is enrolled in a program of home study.~~

~~(c) (1) Certification that a fully and properly credentialed teacher, as defined pursuant to paragraph (4), has been hired by the school district and is providing direct instructional services to each class selected for class size reduction pursuant to this chapter and that there are not more than an annual average of 22 pupils per participating class and not more than a schoolsite average of 20 pupils per participating class.~~

~~(2) In a school district that applies for funding pursuant to subdivision (c) of Section 52129.1, certification of all of the following:~~

~~(A) A fully and properly credentialed teacher, as defined pursuant to paragraph (4), has been hired by the school district and is providing direct instructional services to each class selected for class size reduction pursuant to this chapter.~~

~~(B) The ratio of pupils to teacher does not exceed the 20 to 1 standard ratio by more than two pupils.~~

~~(3) For the purposes of this subdivision, “class” shall be defined in the same manner as provided in the regulations adopted by the Superintendent of Public Instruction prior to July 1, 1996, pursuant to Sections 41376 and 41378 (subdivision (a) of Section 15103 of Title 5 of the California Code of Regulations).~~

~~(4) For purposes of this section, “fully and properly credentialed teacher” means a teacher who holds a preliminary or professional clear credential appropriate to the grade level or subject matter of instruction.~~

~~(d) Certification that the school district has a staff development program pursuant to Section 52127 and that the program has been approved by the governing board of the school district.~~

~~(e) Certification that the school district will collect and maintain any data required by the Superintendent of Public Instruction that will aid in the evaluation of the Class Size Reduction Flexibility Alternative Program. The data shall include, but is not limited to, individual test scores or other records of pupil achievement. Any data collected shall be protected in a manner that will not permit the personal identification of any pupil or parent.~~

~~(f) Commencing with the 2003–04 school year and each school year thereafter, certification that each class reduced pursuant to this chapter is housed in either a separate, self-contained classroom or that the space of each class for each grade level at that schoolsite provides a square footage per pupil enrolled in each class that is not less than the average square footage per pupil enrolled in those grade levels at that schoolsite in the 2002–03 school year.~~

~~52129.3.—(a) A school district that implements a class size reduction flexibility alternative program pursuant to this chapter is subject to this section.~~

~~(b) A school district may establish a program to reduce class size in kindergarten and grades 1 to 3, inclusive, and that program shall be implemented at each schoolsite according to the following priorities:~~

~~(1) If only one grade level is reduced at a schoolsite, the grade level shall be grade 1.~~

~~(2) If only two grade levels are reduced at a schoolsite, the grade levels shall be grades 1 and 2.~~

~~(3) If three grade levels are reduced at a schoolsite, those grade levels shall be kindergarten and grades 1 and 2 or grades 1 to 3, inclusive. Priority shall be given to the reduction of class sizes in grades 1 and 2 before the class sizes of kindergarten or grade 3 are reduced.~~

~~(4) If four grade levels are reduced at a schoolsite, those grade levels shall be kindergarten and grades 1 to 3, inclusive. First priority shall be given to the reduction of class sizes in grades 1 and 2, second priority shall be given to the reduction of class size in kindergarten and grade 3. This paragraph shall be operative only in those fiscal years for which funds are appropriated expressly for the purposes of this paragraph.~~

~~(e) It is the intent of the Legislature to continue to permit the use of combination classes of more than one grade level to the extent that school districts are otherwise permitted to use that instructional strategy. However, any school district that uses a combination class in any class for which funding is received pursuant to this chapter may not claim funding pursuant to this chapter if the total number of pupils in the combination class, regardless of grade level, exceeds an annual average of 22 pupils per certificated teacher assigned to provide direct instructional services.~~

~~(d) The governing board of a school district shall certify to the Superintendent of Public Instruction that it has met the requirements of this section in implementing its Class Size Reduction Flexibility Alternative Program. If a school district receives funding pursuant to this chapter but has not implemented its Class Size Reduction Flexibility Alternative Program for all grades and classes for which it received funding pursuant to this chapter, the Superintendent of Public Instruction shall notify the Controller and the school district in writing and the Controller shall deduct from the school district's next principal apportionment or apportionments of state funds to the district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution, one of the following:~~



~~(1) An amount equal to the amount received by the school district pursuant to this chapter for each participating class that failed to maintain an annual average class size of 22 or fewer pupils.~~

~~(2) An amount equal to the amount received by the school district under this chapter for each participating schoolsite that failed to maintain an annual average class size of 20 or fewer pupils per participating classroom.~~

~~52129.4. (a) The Controller shall include instructions, appropriate to the enforcement of subdivision (d) of Section 52129.3, in the audit guide or supplement to the audit guide required by subdivision (a) of Section 14052.1. These instructions shall include, but are not limited to, procedures for determining the annual average class enrollment of individual classes and schoolsites for classes for which funding is provided to a school district pursuant to this chapter. The procedures to determine average class enrollment shall include criteria for employing sampling which will satisfy both of the following:~~

~~(1) The number of classes to be reviewed shall be based on auditor judgment, but the selection of classes shall be done randomly.~~

~~(2) For each class selected, the sample shall include at least 15 days randomly selected from all instructional days which occurred between the first day of instruction and April 15, inclusive, of the school year.~~

~~(b) (1) If the auditor concludes from the sample, based on his or her professional judgment, that the average class size for the sampled classes is more than 22.4 or that the average class size for a schoolsite represented in the sample is more than 20.4 when averaged over a period from the first day of instruction to April 15 of the school year, the auditor shall conduct a more in-depth review. The in-depth review shall be either of the following:~~

~~(A) A review of all instructional days for all classes for which a district has requested funding pursuant to Section 52129.5.~~

~~(B) A randomly selected sample of all classes and instructional days of sufficient size and designed in such a manner that the class size for each class, when averaged over the period from the first day of instruction to April 15, that the auditor can conclude that the average daily class size does not exceed 22 with an error of no more than 0.4 rate at 95 percent degree of confidence.~~

~~(2) The school district shall make the determination as to which of the two in-depth review methods set forth in paragraph (1) of subdivision (b) shall be used.~~

~~52129.5. The amount of funding that each school district implementing a Class Size Reduction Flexibility Alternative Program pursuant to this chapter is eligible to receive shall be computed as follows:~~

~~(a) If a school district applies to participate in Option One, pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 52129.1, the Superintendent of Public Instruction shall apportion to the applicant school district an amount equal to eight hundred dollars (\$800) for each pupil actually enrolled in the classes in which the school district implements the program, except that the maximum number of pupils for which a school district may claim funding for any class shall not exceed 20. The number of pupils claimed pursuant to this subdivision shall be pupils actually enrolled in classes participating in the Class Size Reduction Flexibility Alternative Program and shall not be based on the average size of the classes for any grade levels for which funding is claimed.~~

~~(b) If a school district applies to participate in Option Two, pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 52129.1, the Superintendent of Public Instruction shall apportion to the applicant school district an amount equal to four hundred dollars (\$400) per pupil actually enrolled in the classes in which the school district implements the program, except that the number of pupils in any class for which a school district may claim funding for the instructional minutes offered shall not exceed 20. The number of pupils claimed pursuant to this subdivision shall be pupils actually enrolled in classes participating in the Class Size Reduction Flexibility Alternative Program and shall not be based on the average size of the classes for any grade levels for which funding is claimed.~~

~~(c) The per pupil amount set forth in subdivisions (a) and (b) shall be increased annually for inflation by the percentage change determined pursuant to subdivision (b) of Section 42238.1.~~

~~(d) Except for the advance apportionment, the Superintendent of Public Instruction shall apportion funds to a school district only after certification that its Class Size Reduction Flexibility Alternative Program has been implemented for that fiscal year.~~

~~(c) The Superintendent of Public Instruction shall apportion funds for this program in the following manner:~~

~~(1) An advance apportionment shall be made following passage of the annual Budget Act. This apportionment shall be provided to all school districts that participated in the program in the prior fiscal year, and shall be limited to 25 percent of the amount computed by multiplying the appropriate per pupil stipends times the actual enrollment in each participating class in the prior fiscal year, as reported by the district pursuant to subdivision (d) of Section 52129.3.~~

~~(2) Each year an apportionment to all applicants shall be made following receipt of applications submitted pursuant to Section 52129.2, adjusted as necessary by the amount received pursuant to paragraph (1). If a school district that participated in this program in the prior fiscal year fails to submit an application, all funds apportioned to that school district pursuant to paragraph (1) shall be deducted from the district's next monthly principal apportionment payment.~~

~~(3) A final adjustment to the amounts paid pursuant to paragraph (2) shall be made following receipt of the actual enrollment in each participating class, to be reported by each school district pursuant to subdivision (d) of Section 52129.3.~~

~~(f) Irrespective of the amount that a school district receives pursuant to subdivision (a) on the basis of the application it makes under Section 52129.2, that district shall not retain any funds it receives for any class that does not actually meet all of the requirements of the Class Size Reduction Flexibility Alternative Program.~~

~~(g) It is the intent of the Legislature that the total statewide amount computed for the purposes of this chapter pursuant to this section be appropriated to the Superintendent of Public Instruction in the annual Budget Act.~~

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